



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB5535

Introduced 2/15/2012, by Rep. Dwight Kay

SYNOPSIS AS INTRODUCED:

20 ILCS 405/405-105

was 20 ILCS 405/64.1

Amends the Department of Central Management Services Law in the Civil Administrative Code of Illinois. Provides that the Department of Central Management Services shall charge the employing State agency for workers' compensation payments for medical expenses and temporary total disability benefits (now, just for temporary total disability) paid to any employee (now, the Department shall charge the State agency only after the employee has received temporary total disability payments for 120 days if the employee's physician has issued a release to return to work but the employing State agency does not return the employee to work).

LRB097 19297 PJG 64546 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning State government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Department of Central Management Services
5 Law of the Civil Administrative Code of Illinois is amended by
6 changing Section 405-105 as follows:

7 (20 ILCS 405/405-105) (was 20 ILCS 405/64.1)

8 Sec. 405-105. Fidelity, surety, property, and casualty
9 insurance. The Department shall establish and implement a
10 program to coordinate the handling of all fidelity, surety,
11 property, and casualty insurance exposures of the State and the
12 departments, divisions, agencies, branches, and universities
13 of the State. In performing this responsibility, the Department
14 shall have the power and duty to do the following:

15 (1) Develop and maintain loss and exposure data on all
16 State property.

17 (2) Study the feasibility of establishing a
18 self-insurance plan for State property and prepare
19 estimates of the costs of reinsurance for risks beyond the
20 realistic limits of the self-insurance.

21 (3) Prepare a plan for centralizing the purchase of
22 property and casualty insurance on State property under a
23 master policy or policies and purchase the insurance

1 contracted for as provided in the Illinois Purchasing Act.

2 (4) Evaluate existing provisions for fidelity bonds
3 required of State employees and recommend changes that are
4 appropriate commensurate with risk experience and the
5 determinations respecting self-insurance or reinsurance so
6 as to permit reduction of costs without loss of coverage.

7 (5) Investigate procedures for inclusion of school
8 districts, public community college districts, and other
9 units of local government in programs for the centralized
10 purchase of insurance.

11 (6) Implement recommendations of the State Property
12 Insurance Study Commission that the Department finds
13 necessary or desirable in the performance of its powers and
14 duties under this Section to achieve efficient and
15 comprehensive risk management.

16 (7) Prepare and, in the discretion of the Director,
17 implement a plan providing for the purchase of public
18 liability insurance or for self-insurance for public
19 liability or for a combination of purchased insurance and
20 self-insurance for public liability (i) covering the State
21 and drivers of motor vehicles owned, leased, or controlled
22 by the State of Illinois pursuant to the provisions and
23 limitations contained in the Illinois Vehicle Code, (ii)
24 covering other public liability exposures of the State and
25 its employees within the scope of their employment, and
26 (iii) covering drivers of motor vehicles not owned, leased,

1 or controlled by the State but used by a State employee on
2 State business, in excess of liability covered by an
3 insurance policy obtained by the owner of the motor vehicle
4 or in excess of the dollar amounts that the Department
5 shall determine to be reasonable. Any contract of insurance
6 let under this Law shall be by bid in accordance with the
7 procedure set forth in the Illinois Purchasing Act. Any
8 provisions for self-insurance shall conform to subdivision
9 (11).

10 The term "employee" as used in this subdivision (7) and
11 in subdivision (11) means a person while in the employ of
12 the State who is a member of the staff or personnel of a
13 State agency, bureau, board, commission, committee,
14 department, university, or college or who is a State
15 officer, elected official, commissioner, member of or ex
16 officio member of a State agency, bureau, board,
17 commission, committee, department, university, or college,
18 or a member of the National Guard while on active duty
19 pursuant to orders of the Governor of the State of
20 Illinois, or any other person while using a licensed motor
21 vehicle owned, leased, or controlled by the State of
22 Illinois with the authorization of the State of Illinois,
23 provided the actual use of the motor vehicle is within the
24 scope of that authorization and within the course of State
25 service.

26 Subsequent to payment of a claim on behalf of an

1 employee pursuant to this Section and after reasonable
2 advance written notice to the employee, the Director may
3 exclude the employee from future coverage or limit the
4 coverage under the plan if (i) the Director determines that
5 the claim resulted from an incident in which the employee
6 was grossly negligent or had engaged in willful and wanton
7 misconduct or (ii) the Director determines that the
8 employee is no longer an acceptable risk based on a review
9 of prior accidents in which the employee was at fault and
10 for which payments were made pursuant to this Section.

11 The Director is authorized to promulgate
12 administrative rules that may be necessary to establish and
13 administer the plan.

14 Appropriations from the Road Fund shall be used to pay
15 auto liability claims and related expenses involving
16 employees of the Department of Transportation, the
17 Illinois State Police, and the Secretary of State.

18 (8) Charge, collect, and receive from all other
19 agencies of the State government fees or monies equivalent
20 to the cost of purchasing the insurance.

21 (9) Establish, through the Director, charges for risk
22 management services rendered to State agencies by the
23 Department. The State agencies so charged shall reimburse
24 the Department by vouchers drawn against their respective
25 appropriations. The reimbursement shall be determined by
26 the Director as amounts sufficient to reimburse the

1 Department for expenditures incurred in rendering the
2 service.

3 The Department shall charge the employing State agency
4 or university for workers' compensation payments for
5 medical expenses and temporary total disability benefits
6 paid to any employee ~~after the employee has received~~
7 ~~temporary total disability payments for 120 days if the~~
8 ~~employee's treating physician has issued a release to~~
9 ~~return to work with restrictions and the employee is able~~
10 ~~to perform modified duty work but the employing State~~
11 ~~agency or university does not return the employee to work~~
12 ~~at modified duty. Modified duty shall be duties assigned~~
13 ~~that may or may not be delineated as part of the duties~~
14 ~~regularly performed by the employee. Modified duties shall~~
15 ~~be assigned within the prescribed restrictions established~~
16 ~~by the treating physician and the physician who performed~~
17 ~~the independent medical examination.~~ The amount of all
18 reimbursements shall be deposited into the Workers'
19 Compensation Revolving Fund which is hereby created as a
20 revolving fund in the State treasury. In addition to any
21 other purpose authorized by law, moneys in the Fund shall
22 be used, subject to appropriation, to pay medical ~~these~~ or
23 other temporary total disability claims of employees of
24 State agencies and universities.

25 Beginning with fiscal year 1996, all amounts recovered
26 by the Department through subrogation in workers'

1 compensation and workers' occupational disease cases shall
2 be deposited into the Workers' Compensation Revolving Fund
3 created under this subdivision (9).

4 (10) Establish rules, procedures, and forms to be used
5 by State agencies in the administration and payment of
6 workers' compensation claims. The Department shall
7 initially evaluate and determine the compensability of any
8 injury that is the subject of a workers' compensation claim
9 and provide for the administration and payment of such a
10 claim for all State agencies. The Director may delegate to
11 any agency with the agreement of the agency head the
12 responsibility for evaluation, administration, and payment
13 of that agency's claims.

14 (10a) If the Director determines it would be in the
15 best interests of the State and its employees, prepare and
16 implement a plan providing for: (i) the purchase of
17 workers' compensation insurance for workers' compensation
18 liability; (ii) third-party administration of
19 self-insurance, in whole or in part, for workers'
20 compensation liability; or (iii) a combination of
21 purchased insurance and self-insurance for workers'
22 compensation liability, including reinsurance or stop-loss
23 insurance. Any contract for insurance or third-party
24 administration shall be on terms consistent with State
25 policy; awarded in compliance with the Illinois
26 Procurement Code; and based on, but not limited to, the

1 following criteria: administrative cost, service
2 capabilities of the carrier or other contractor and
3 premiums, fees, or charges. By April 1 of each year, the
4 Director must report and provide information to the State
5 Workers' Compensation Program Advisory Board concerning
6 the status of the State workers' compensation program for
7 the next fiscal year. Information includes, but is not
8 limited to, documents, reports of negotiations, bid
9 invitations, requests for proposals, specifications,
10 copies of proposed and final contracts or agreements, and
11 any other materials concerning contracts or agreements for
12 the program. By the first of each month thereafter, the
13 Director must provide updated, and any new, information to
14 the State Workers' Compensation Program Advisory Board
15 until the State workers' compensation program for the next
16 fiscal year is determined.

17 (11) Any plan for public liability self-insurance
18 implemented under this Section shall provide that (i) the
19 Department shall attempt to settle and may settle any
20 public liability claim filed against the State of Illinois
21 or any public liability claim filed against a State
22 employee on the basis of an occurrence in the course of the
23 employee's State employment; (ii) any settlement of such a
24 claim is not subject to fiscal year limitations and must be
25 approved by the Director and, in cases of settlements
26 exceeding \$100,000, by the Governor; and (iii) a settlement

1 of any public liability claim against the State or a State
2 employee shall require an unqualified release of any right
3 of action against the State and the employee for acts
4 within the scope of the employee's employment giving rise
5 to the claim.

6 Whenever and to the extent that a State employee
7 operates a motor vehicle or engages in other activity
8 covered by self-insurance under this Section, the State of
9 Illinois shall defend, indemnify, and hold harmless the
10 employee against any claim in tort filed against the
11 employee for acts or omissions within the scope of the
12 employee's employment in any proper judicial forum and not
13 settled pursuant to this subdivision (11), provided that
14 this obligation of the State of Illinois shall not exceed a
15 maximum liability of \$2,000,000 for any single occurrence
16 in connection with the operation of a motor vehicle or
17 \$100,000 per person per occurrence for any other single
18 occurrence, or \$500,000 for any single occurrence in
19 connection with the provision of medical care by a licensed
20 physician employee.

21 Any claims against the State of Illinois under a
22 self-insurance plan that are not settled pursuant to this
23 subdivision (11) shall be heard and determined by the Court
24 of Claims and may not be filed or adjudicated in any other
25 forum. The Attorney General of the State of Illinois or the
26 Attorney General's designee shall be the attorney with

1 respect to all public liability self-insurance claims that
2 are not settled pursuant to this subdivision (11) and
3 therefore result in litigation. The payment of any award of
4 the Court of Claims entered against the State relating to
5 any public liability self-insurance claim shall act as a
6 release against any State employee involved in the
7 occurrence.

8 (12) Administer a plan the purpose of which is to make
9 payments on final settlements or final judgments in
10 accordance with the State Employee Indemnification Act.
11 The plan shall be funded through appropriations from the
12 General Revenue Fund specifically designated for that
13 purpose, except that indemnification expenses for
14 employees of the Department of Transportation, the
15 Illinois State Police, and the Secretary of State shall be
16 paid from the Road Fund. The term "employee" as used in
17 this subdivision (12) has the same meaning as under
18 subsection (b) of Section 1 of the State Employee
19 Indemnification Act. Subject to sufficient appropriation,
20 the Director shall approve payment of any claim, without
21 regard to fiscal year limitations, presented to the
22 Director that is supported by a final settlement or final
23 judgment when the Attorney General and the chief officer of
24 the public body against whose employee the claim or cause
25 of action is asserted certify to the Director that the
26 claim is in accordance with the State Employee

1 Indemnification Act and that they approve of the payment.
2 In no event shall an amount in excess of \$150,000 be paid
3 from this plan to or for the benefit of any claimant.

4 (13) Administer a plan the purpose of which is to make
5 payments on final settlements or final judgments for
6 employee wage claims in situations where there was an
7 appropriation relevant to the wage claim, the fiscal year
8 and lapse period have expired, and sufficient funds were
9 available to pay the claim. The plan shall be funded
10 through appropriations from the General Revenue Fund
11 specifically designated for that purpose.

12 Subject to sufficient appropriation, the Director is
13 authorized to pay any wage claim presented to the Director
14 that is supported by a final settlement or final judgment
15 when the chief officer of the State agency employing the
16 claimant certifies to the Director that the claim is a
17 valid wage claim and that the fiscal year and lapse period
18 have expired. Payment for claims that are properly
19 submitted and certified as valid by the Director shall
20 include interest accrued at the rate of 7% per annum from
21 the forty-fifth day after the claims are received by the
22 Department or 45 days from the date on which the amount of
23 payment is agreed upon, whichever is later, until the date
24 the claims are submitted to the Comptroller for payment.
25 When the Attorney General has filed an appearance in any
26 proceeding concerning a wage claim settlement or judgment,

1 the Attorney General shall certify to the Director that the
2 wage claim is valid before any payment is made. In no event
3 shall an amount in excess of \$150,000 be paid from this
4 plan to or for the benefit of any claimant.

5 Nothing in Public Act 84-961 shall be construed to
6 affect in any manner the jurisdiction of the Court of
7 Claims concerning wage claims made against the State of
8 Illinois.

9 (14) Prepare and, in the discretion of the Director,
10 implement a program for self-insurance for official
11 fidelity and surety bonds for officers and employees as
12 authorized by the Official Bond Act.

13 (Source: P.A. 96-928, eff. 6-15-10; 97-18, eff. 6-28-11.)